

<https://helda.helsinki.fi>

Pioneering International Women's Rights? : The US National Woman's Party and the 1933 Montevideo Equal Rights Treaties

Amorosa, Paolo

2019-05

Amorosa , P 2019 , ' Pioneering International Women's Rights? The US National Woman's Party and the 1933 Montevideo Equal Rights Treaties ' , European Journal of International Law , vol. 30 , no. 2 , pp. 415-437 . <https://doi.org/10.1093/ejil/chz025>

<http://hdl.handle.net/10138/319764>

<https://doi.org/10.1093/ejil/chz025>

Downloaded from Helda, University of Helsinki institutional repository.

This is an electronic reprint of the original article.

This reprint may differ from the original in pagination and typographic detail.

Please cite the original version.

Pioneering International Women's Rights? The US National Woman's Party and the 1933 Montevideo Equal Rights Treaties

Paolo Amorosa*

Abstract

Histories of equal rights for women in international law normally begin with post-World War II initiatives. Such an approach leaves out two treaties signed at the 1933 Montevideo Pan-American Conference, the Equal Nationality Treaty and the Equal Rights Treaty, which remain forgotten among international lawyers. By reconstructing their inception and intellectual background, this article aims to raise awareness about debates on international law among feminist activists in the interwar years. In turn, the focus on activist work allows for the recovery of the contribution of women to the development of the discipline in that seminal period, a contribution usually obfuscated by men's predominance in diplomatic and academic roles. By outlining the contribution of two key promoters of the Montevideo treaties – Doris Stevens and Alice Paul of the National Woman's Party – the article takes a step towards the re-inclusion of women's rights activists within the shared heritage of international law and its history.

1 Introduction

Feminist approaches have been appearing in the mainstream of international legal scholarship for some time.¹ Also, in the last two decades, a wealth of historical works

* Post-Doctoral Researcher, Centre of Excellence in Law, Identity and the European Narratives (EuroStorie), University of Helsinki, Finland. Email: paolo.amorosa@helsinki.fi. The Centre of Excellence in Law is funded by the Academy of Finland (Funding Decision no. 312154).

¹ A seminal event in this respect was the publication in 1991 of Charlesworth, Chinkin and Wright, 'Feminist Approaches to International Law', 85 *American Journal of International Law (AJIL)* (1991) 613. For a later appraisal of the influence of the article and its arguments, see the series of comments published in October 2012 on the blog *IntLawGrrls*, available at www.intlawgrrls.com/search/label/feminism%20series.

has appeared, enormously increasing our knowledge and understanding of this discipline's past. Nevertheless, the earliest international treaties prescribing equal rights for women, signed in 1933 at the Montevideo Pan-American Conference, have not received attention in publications by international lawyers.² Even in texts dedicated to the international evolution of women's rights, the Equal Nationality Treaty and the Equal Rights Treaty rarely obtain a mention.³ In terms of interwar treaty achievements, commentators normally point only to the protective measures creating special regimes for women, such as the conventions against their trafficking, adopted under the aegis of the League of Nations, and the International Labour Organization conventions, which prescribe limitations to what can be asked of women in terms of working conditions.

It is only with accounts of the inception of the Charter of the United Nations that the first mention of international agreements based on an egalitarian approach, rather than a protective one, appear. Often, the lobbying of women delegates and non-governmental organizations (NGOs) gets credited with the prescription of non-discrimination on the grounds of sex enshrined in Article 1(3) of the UN Charter and the recognition of equal rights between men and women in its preamble. Sometimes, the main institutional sponsor of the Montevideo treaties, the Inter-American Commission on the Status of Women, is mentioned among these women's rights organizations. Yet neither the treaties nor the commission's earlier activity find space in international lawyers' accounts, notwithstanding the scant record of women's rights in interwar international law.

To be sure, there could be valid reasons explaining and justifying the choice to exclude the treaties from works on the protection of the international protection of women's rights. First, there is the economy of most of the relevant texts; focused on the current content of international law on the subject, they are introduced by a necessarily skeletal historical survey. Second, one of the treaties – the Equal Rights Treaty – never received the necessary ratifications and, therefore, never entered into force, which, in itself, would be an obvious criterion to exclude a treaty from any description of the positive international law regarding the protection of women's rights. Third, even the treaty that entered into force – the Equal Nationality Treaty – had an obvious regional, rather than global, scope. Nevertheless, this circumstance has not prevented other instruments that were approved at the Montevideo Conference, such as the Convention on the Rights and Duties of Nations, from gaining a prominent place in the canon of international law.⁴

² This is not the case with scholars of women's history. See, e.g., D.E. Hill, 'International Law for Women's Rights' (1999) (PhD dissertation on file at the University of California, Berkeley); C. Bredbenner, *A Nationality of Her Own: Women, Marriage and the Law of Citizenship* (1998), at 233–238.

³ Convention on the Nationality of Women (Equal Nationality Treaty), 26 December 1933, reprinted in 'Seventh International Conference of American States – Final Act', 28 *AJIL*, Supplement (1934) 62; Equal Rights Treaty, 26 December 1933, reprinted in Scott, 'The Seventh International Conference of American States', 28 *AJIL* (1934) 219, at 221.

⁴ Convention on the Rights and Duties of Nations, 26 December 1933, reprinted in 'Seventh International Conference of American States – Final Act', 28 *AJIL*, Supplement (1934) 75.

Whatever the reasons for these treaties' oblivion among international lawyers to date, the aim of this article is to signal their existence to scholars of the discipline. Hopefully, in turn, this effort will encourage their inclusion in future studies and inspire further explorations. My motivation is not limited to providing information on legislative texts that represented a novelty for international law. I see the Montevideo treaties as a key product of the early reflection on the role of feminist advocacy for women's rights in international institutions, marked by the confrontation between equal rights and protective approaches. This article narrates the inception of the treaties and the campaign towards their signing through the agency of two US leaders of the equal rights camp, Doris Stevens (1888–1963) and Alice Paul (1885–1977). By providing an account of their thought and actions, I aim to participate in the re-writing of women's contribution to the history of interwar international law, a task that has been undertaken only occasionally by international legal scholars to date.⁵

Both Stevens and Paul had discovered and joined the suffrage movement in college. Already during her studies at Oberlin between 1906 and 1911, Stevens had defined the political goal of her life in a single sentence: 'Same rules for girls and boys.'⁶ In turn, Paul immediately connected her feminism with the strong egalitarian ethos of her Quaker religious background. Together, they rose to prominence as young feminist leaders in the final push of the suffrage struggle, eventually orchestrating the foundation of the National Woman's Party (NWP) in 1916.⁷ Paul conceived the war-time picketing protest of the White House, which led to the imprisonment of several party members, including her and Stevens. Stevens would write a successful account of that experience in a book she titled *Jailed for Freedom*.⁸ Their actions proved crucial to maintaining women's suffrage on the political agenda. This was no common feat; suffrage was an issue that lawmakers had traditionally brushed off. It should have been even easier for them to continue doing so at a time when World War I and the later establishment of a new global order at Versailles could have easily suffocated any other concern. Yet, by 1920, the 19th Amendment to the US Constitution had been ratified, and women could vote nationwide.

This opened a new phase for the women's rights movement, an assorted coalition that had retained – until then – a semblance of unity thanks to the common goal of suffrage. During the early 1920s, Paul crafted a new agenda for the NWP, built around the achievement of equal rights through the elimination of legal rules discriminating

⁵ As remarkable exceptions, I can point to the article authored by Christine Chinkin and Karen Knop on Chrystal Macmillan (Chinkin and Knop, 'Remembering Chrystal Macmillan: Women's Equality and Nationality in International Law', 22 *Michigan Journal of International Law* (2000–2001) 523) and to Part 3 of Knop's book *Diversity and Self-Determination in International Law* (2002), describing the activities of, among others, peace activist Jane Addams and international lawyer Sarah Wambaugh, who was recognized as the foremost global expert on the plebiscites at the time.

⁶ D. Stevens, 'Autobiographical Jottings', Folder 251, Box 8, Doris Stevens Papers, Schlesinger Library, Radcliffe Institute, Harvard University, Cambridge, MA.

⁷ On their suffrage activity, see, e.g., C. Lunardini, *Alice Paul: Equality for Women* (2013); M.K. Trigg, *Feminism as Life's Work* (2014).

⁸ D. Stevens, *Jailed for Freedom* (1920).

on the basis of sex, including the protective ones championed by other feminist organizations. The treaties eventually signed at Montevideo represented a concrete expression of the internationalization of the NWP's egalitarian project, a move favoured by the cooperation that Stevens and Paul began with international lawyer James Brown Scott (1866–1943) in the late 1920s.⁹ Indeed, the two treaties had a different scope of application and enjoyed a different measure of support within the larger women's rights movement, but both responded to the basic philosophy that consistently informed the work of the NWP leaders: to have legal rules that would not distinguish between sexes in any way.

As this article shows, the NWP-led campaign promoting the Montevideo treaties was the earliest sustained effort to affirm the equality of women and men through international law. It constitutes an ideal antecedent to the better-known lobbying action of women's rights activists in the context of the creation of the United Nations, furthering our understanding of early feminist approaches to the discipline.

2 The NWP in the 1920s: From Suffrage to Equal Rights

The NWP had represented a minimal portion of the suffrage movement in terms of the number of members. Nonetheless, it had managed to achieve results and prominence beyond its size because of the dramatic and radical nature of its methods. This same militant attitude had made the NWP's membership particularly heterogeneous. Alongside a liberal and bourgeois core, it attracted women from the working class, the political left and black communities.¹⁰ The new direction that Alice Paul and her close collaborators pushed towards¹¹ would further reduce and reshape the membership of the party.¹² In July 1920, just before the ratification of the 19th Amendment, Paul had already found the new goal in 'the passage of a blanket enactment to remove all discriminations against women in existing legislation'.¹³ This was the practical meaning that the NWP leadership had given to women's full equality with men. It was only at the party's convention, in February 1921, that the exclusive and exclusionary nature of the endeavour became evident to its later opponents.

⁹ Scott had been a key founder of the American Society of International Law in 1906 and the main legal advisor at the State Department between 1906 and 1911. Since 1910, he had been one of the leaders of the generously funded Carnegie Endowment of International Peace (CEIP), directing its resources to support a series of projects he favoured, including, after meeting Stevens, the advocacy of international equal rights for women. Generally on Scott, see P. Amorosa, 'The American Project and the Politics of History: James Brown Scott and the Origins of International Law' (2018) (PhD dissertation on file at the University of Helsinki), available at <https://helda.helsinki.fi/handle/10138/233591>.

¹⁰ About the attractiveness of the early National Woman's Party (NWP) for women of the labour movement, see Cott, 'Feminist Politics in the 1920s: The National Woman's Party', 71 *Journal of American History* (1984) 43, at 43–44; Trigg, *supra* note 7, at 54, 56. On the reasons black women favoured the NWP's approach to the suffrage struggle, see Cott (at 50).

¹¹ On Paul's authoritarian leadership style, see Cott, *supra* note 10, at 45.

¹² At the height of the suffrage struggle, the NWP had between 35,000 and 60,000 members. During the 1920s, the membership never exceeded 10,000 (see *ibid.*, at 55).

¹³ Quoted in Geidel, 'The National Woman's Party and the Origins of the Equal Rights Amendment', 42 *The Historian* (1980) 557, at 562.

In the lead-up to the event, Mary White Ovington, a white socialist who had been a founding member of the National Association for the Advancement of Colored People, stressed the importance of including a black woman as a speaker. The black vote was violently suppressed in the South. As an organization devoted to equal suffrage, Ovington argued, the NWP should take up the issue. Emma Wold denied the request on behalf of Paul:

Wold ... explained that the convention could give the podium only to groups with legislative programs for women or with feminist aims. ... Since Mary C. Talbert of the National Association of Colored Women's Clubs, the speaker whom Ovington recommended, represented a group with a 'racial', not 'feminist', intent, she could not be featured. ... She encouraged the appointment of black delegates who could speak from the floor.¹⁴

The rights of black women were just the first issue to be sacrificed on the altar of equality. At the convention, a minority report argued for the party to turn towards pacifism and disarmament. Crystal Eastman, a socialist lawyer, presented a more articulated programme of reforms to liberate women, spanning from birth control and sexual morality to marriage, divorce and inheritance.¹⁵ Both proposals were voted down. Notwithstanding the vocal protests by Eastman and others about the undemocratic attitude of the NWP's leadership, the majority resolution, embracing the programme of removing women's legal disabilities, had the genuine support of most delegates.¹⁶ The outcome prompted defections and criticism by left-wing members. Addressing merely legal disabilities, 'felt chiefly by women of property', could not get 'women ... liberated' as it failed to 'get at the root of the matter'. Others complained that the newly instated higher membership fees turned the NWP into 'a conservative, property-holding, upper-crust group', an 'aristocratic affair'.¹⁷

Still, the initial action of the NWP towards equality legislation was not as uncompromising as it would later become, with instances of social feminists who championed protective measures. The NWP's leaders scoured state codes for rules based on sex discrimination and drafted a model blanket bill to be introduced in state legislatures. The model bill listed six legislative areas where inequality was to be addressed, but it also contained a safeguard clause for protective legislation. As Paul explained early in the campaign to the Massachusetts NWP chairperson, she did not 'want to interfere in any way with the so called welfare legislation ... protecting women from night work and from too long hours of labor, even though this legislation may not be equal for men and women'.¹⁸ Indeed, the Equal Rights Bill championed by the NWP and passed by the Wisconsin legislature in June 1921 preserved the 'special protection

¹⁴ Cott, *supra* note 10, at 51.

¹⁵ For the text of Crystal Eastman's resolution and her criticism of Paul's post-suffrage 'normalization', see Eastman, 'Alice Paul's Convention', 37 *The Liberator* (April 1921) 9, at 9–10.

¹⁶ See Cott, *supra* note 10, at 48–49; Geidel, *supra* note 13, at 565–566.

¹⁷ Quotations are taken from NWP members; quoted in Cott, *supra* note 10, at 49. On the convention and the criticism directed at it, see also S.D. Becker, *The Origins of the Equal Rights Amendment: American Feminism between the Wars* (1981), at 17–18.

¹⁸ Cott, *supra* note 10, at 56.

and privileges which [women] now enjoy for the general welfare'. The bill also followed closely the model list, providing 'women' with 'the same rights ... as men in the exercise of suffrage, freedom of contract, choice of residence for voting purposes, jury service, holding office, holding and conveying property, care and custody of children and in all other respects'.¹⁹

By the autumn, Paul had changed her position: 'I do not believe in special protective labor legislation for women. ... I think that enacting labor laws along sex lines is erecting another handicap for women in the economic struggle.'²⁰ This shift, according to historian Nancy Cott, was likely a result of the influence that Gail Laughlin had had on Paul.²¹ Laughlin, a lawyer from Maine, as chair of the NWP Lawyers Committee began producing draft bills, including a federal amendment, without a safeguard clause. Going forward, the positions of both the NWP and social feminists became more rigid and antithetical, especially after a failed attempt at a compromise between disagreeing women's organizations in December 1921.²² During the course of 1922, a score of prominent figures and associations, including the National League of Women Voters (NLWV),²³ came out unequivocally with their opposition to blanket equal rights bills.²⁴ At the same time, Laughlin took the lead in quashing all remaining dissenting voices within the NWP. Her legal reasoning was two-fold. First, the proposed equal rights legislation would not give freedom of contract a wider space of application than it already had under the US Constitution and the statutes in force. Second, it was the protective legislation, and not freedom of contract, that was preventing women from competing in the job market. 'If women can be segregated as a class for special legislation under any line', Laughlin's argument went, 'the same classification can be used for special restrictions along any other line which may, at any time, appeal to the caprice or prejudice of our legislatures'. It was this legislation treating women as a class that was threatening to stop 'the advancement of women in business and industry' and consign them 'to the lowest worst paid labor'.²⁵

Accordingly, in April 1923, *Equal Rights*, the NWP's journal, applauded the decision of the US Supreme Court in the case *Adkins v. Children's Hospital*.²⁶ Upholding its 1905 judgment in *Lochner v. New York*, the Court voided a District of Columbia law mandating a minimum wage for women and children as a violation of freedom of contract.²⁷ Yet, it was exactly this exclusive focus on the elimination of legal discrimination based on sex that allowed NWP members to claim they were actual feminists while their opponents were just reformers.²⁸ In addition to the single-issue focus, the

¹⁹ 1921 Wisconsin Act, ch. 529, Wisconsin Session Laws of 1921, at 869.

²⁰ Quoted in Cott, *supra* note 10, at 57.

²¹ See *ibid.*

²² On this meeting, see *ibid.*, at 57–58; Geidel, *supra* note 13, at 570.

²³ The National League of Women Voters (NLWV) was the successor to the largest suffrage organization in the USA, the National American Woman Suffrage Association.

²⁴ See, e.g., Geidel, *supra* note 13, at 572–574.

²⁵ Quoted in Cott, *supra* note 10, at 59.

²⁶ See *ibid.*, at 62. *Adkins v. Children's Hospital*, 261 US 525 (1923).

²⁷ *Lochner v. New York*, 198 US 45 (1905).

²⁸ See, e.g., the quote in Becker, *supra* note 17, at 171.

NWP soon returned to another feature of the victorious suffrage campaign: the primary, if not exclusive, insistence on a federal amendment. Indeed, besides the victory in Wisconsin, the NWP state campaigns for blanket equality bills or elimination of specific discriminatory rules had achieved little or no success. In July 1923, Paul announced the new direction. She claimed Susan B. Anthony's legacy by organizing a NWP convention in Seneca Falls, on the 75th anniversary of the one that had marked the symbolic beginning of the woman's movement.²⁹ There she presented a constitutional amendment of her own drafting, which was unanimously approved: 'Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction.'³⁰ There was no safeguard clause and no list of legislative areas to address. The NWP demanded full constitutional equality for women without any limitation or qualification. The Equal Rights Amendment (ERA) would be introduced in Congress for the first time in December 1923.

The national struggle between equal rights feminists and supporters of protective legislation soon spilled into the international women's rights movement. When, in 1925, the NWP sought membership in the International Woman Suffrage Alliance (IWSA), its application was rejected because of the opposition of the NLWV.³¹ In turn, the rejection prompted the resignation from the IWSA of the Six Point Group, a British feminist equal rights organization, led by Lady Margaret Rhondda. Rhondda had been already cooperating with the NWP as a member of its international advisory committee, created in June 1925. The creation of the committee was an effect of the newly found enthusiasm of the NWP for internationalism. Now that the party had a well-defined post-suffrage strategy, its leadership conceived of international activities no longer as a distraction but, rather, as a path to increased influence and effectiveness. In any case, the NWP had internationalism in its pedigree; its uncompromising attitude during the Great War proved that it was ready to put feminism above patriotism when it counted.

It was Rhondda who suggested to Paul, in 1926, to start a campaign for an international equal rights treaty. The NWP leader immediately drafted one, modelled on the ERA: 'For the next decade Paul spent most of her time outside the US attempting to sell the treaty to feminists, the Pan-American Union, the League of Nations and the International Labor Office (ILO).'³² While Paul concentrated on the League of Nations and Europe, Stevens would become the main figure of the NWP's equal rights work in Latin America and at the Pan-American Union. The NWP had first looked at Latin America with interest in the context of the effort to achieve equal nationality rights for women in US law. Indeed, following the enactment of the 1907 Expatriation Act,

²⁹ On the historical legacy of the 1848 convention, including its influence on the 1923 NWP event, see L. Tetrault, *The Myth of Seneca Falls: Memory and the Women's Suffrage Movement, 1848–1898* (2014), at 181–199.

³⁰ Quoted in Cott, *supra* note 10, at 59.

³¹ On the controversy, see Becker, *supra* note 17, at 166–168.

³² Miller, "'Geneva – the Key to Equality': Inter-war Feminists and the League of Nations', 3 *Women's History Review* (1994) 219, at 221. Expatriation Act 1907, 34 Stat. 1228.

the citizenship of every woman in the nation was dependent on the citizenship of her husband.³³

After the passage of the 1922 Cable Act, which had restored independent nationality at least as a default principle, the NWP realized that progress towards equal citizenship was being made.³⁴ Nationality law was an area that promised further success. It was also an issue on which equal rights and social feminists managed to find some alignment and loose cooperation, at least through the 1920s. Notwithstanding their diverging understandings of the significance of citizenship for women, both groups lobbied to remove the same discriminatory nationality rules.³⁵

A handful of South and Latin American republics had gone further in terms of equal citizenship than the USA had done with the Cable Act or did not have a discriminatory nationality law in the first place.³⁶ By the mid-1920s, this had convinced some US feminists that South and Latin American governments might be more willing to listen to their arguments than European ones.³⁷ Almost by chance, the NWP would beat the NLWV to this advocacy opportunity. A resolution of the 1923 Pan-American Conference, obtained through the lobbying of Latin American feminists, urged the governments of the continent to follow up on women's rights issues and include women in the official proceedings. Already in 1924, the Brazilian feminist Bertha Lutz searched for support in the USA in view of the next conference in 1928 in Cuba. Writing to Carrie Chapman Catt, Lutz urged the NLWV to send representatives: 'Catt, however, thought that the trip to Havana would be too costly and the expense not worth the potential outcome, discounting the importance of Pan American feminism and viewing it as secondary in the promotion of women's rights on the international scene.'³⁸

The NWP would learn about the event much later and respond with an opposite, enthusiastic approach. In December 1927, Cuban feminist and lawyer Flora Díaz Parrado visited the NWP's headquarters in Washington, DC, asking the party to join Latin American women's rights activists at the conference. Parrado called on the sisterhood and claimed that the participation of US feminists would give a boost to the suffrage struggle in which Cuban women were engaged.³⁹ Jane Norman Smith, the

³³ For historical overviews of the status of women under US nationality law, see Bredbenner, *supra* note 2; Sapiro, 'Women, Citizenship and Nationality: Immigration and Naturalization Policies in the United States', 13 *Politics and Society* (1984) 1; Cott, 'Marriage and Women's Citizenship in the United States, 1830–1934', 103 *American Historical Review* (1998) 1440.

³⁴ Cable Act 1922, 42 Stat. 1021b.

³⁵ See Bredbenner, *supra* note 2, at 155–157.

³⁶ See *ibid.*, at 195, 197.

³⁷ See *ibid.*, at 197.

³⁸ Wamsley, 'Constructing Feminism across Borders: The Pan American Women's Movement and the Founding of the Inter-American Commission of Women', in P. Jonsson, S. Neunsinger and J. Sangster (eds), *Crossing Boundaries: Women's Organizing in Europe and the Americas, 1880s–1940s* (2007) 51, at 69.

³⁹ On Parrado's visit and her case to NWP members, see DuBois, 'A Momentary Transnational Sisterhood: Cuban/U.S. Collaboration in the Formation of the Inter-American Commission of Women', in A. Lorini (ed.), *An Intimate and Contested Relation: The United States and Cuba in the Late Nineteenth and Early Twentieth Centuries* (2005) 81, at 86–87.

NWP chairperson at the time, wrote to member Margaret Lambie regretting their late discovery: 'It is such a pity that we did not know about it sooner for it is very important.'⁴⁰ Indeed, the event was scheduled to start in the following month of January. Notwithstanding the short timeframe for preparations, the NWP dispatched Smith, Muna Lee, Valentine Winters and Doris Stevens to Havana. There, Stevens met the influential international lawyer James Brown Scott and introduced him to the Equal Rights Treaty they would go on to champion together.

3 The 1928 Havana Conference and the Creation of the Inter-American Commission of Women

The sixth Pan-American Conference took place between 16 January and 20 February 1928. The women of the NWP spent their initial efforts in Havana lobbying the US delegates, finding them 'preoccupied with detecting and countering anti imperialism'.⁴¹ It was in the course of one of these attempts that Stevens met Scott; by 1 February, she had followed up with a letter asking him to consider the NWP's attached proposal for an equal rights treaty and offer his 'eminent legal opinion'.⁴²

The NWP's envoys found better fortune with the Cuban delegates. Stevens made a good impression on Orestes Ferrara, the Cuban ambassador to the USA. More crucially, she gained the ear of the president of the conference, Scott's friend and associate Antonio de Bustamante.⁴³ This would be instrumental for the feminists' agenda. Indeed, the governments and the Pan-American Union had not followed up on the resolution approved at the previous conference of 1923. There was no space in the official programme of the conference for women's rights. But, on 7 February, Bustamante favoured a motion to add a '[p]lenary meeting ... with extra-official character' to allow 'the representatives of the various feminist associations' to illustrate 'their viewpoints on the matter of civil and political rights for woman'.⁴⁴ Moreover, Bustamante agreed to preside the session, attended by a third of the conference delegates and a 'thousand local women' who 'poured into the hall, galleries and stairwells

⁴⁰ Quoted in Wamsley, *supra* note 38, at 69.

⁴¹ Hill, *supra* note 2, at 31. On the patronizing attitude shown to Stevens by Charles Evans Hughes, secretary of state and president of the American Society of International Law, see Bredbenner, *supra* note 2, at 200–201. On the international legal implications of the political tensions surrounding the conference, see Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (2014), at 343–349.

⁴² Doris Stevens to James Brown Scott, 1 February 1928, Folder 1, Box 48, James Brown Scott Papers (JBS Papers), Booth Family Center for Special Collections, Lauinger Library, Georgetown University, Washington, DC.

⁴³ See Dubois, *supra* note 39, at 87.

⁴⁴ 'Motion – Invitation to Women's Associations to Present Their Views Relative to the Rights of Women', Sixth International Conference of American States, 7 February 1928, cited in James Brown Scott (ed.), *The International Conferences of American States, 1889–1928: A Collection of the Conventions, Recommendations, Resolutions, and Motions adopted by the First Six Conferences of the American States, and Documents Relating to the Organization of the Conferences* (1931) 324, at 324.

[of] the University's Aula Magna' to demonstrate their demand of suffrage.⁴⁵ Stevens was among the speakers.

On 18 February, the conference followed up on the event by unanimously approving the resolution that established the Inter-American Commission of Women (IACW), which was widely considered to be 'the first inter-governmental body to deal with women's issues'.⁴⁶ The unofficial, but ever-present, theme of the conference had been the soothing of Latin American discontent with the hegemonic actions of the USA. At the same time, the US delegation sought to secure and reinforce that hegemony. In line with this attitude, the governing board of the Pan-American Union would shortly appoint the most visible feminist representative from the USA, Doris Stevens, as chairperson of the new institution. Interestingly, a significant part of Stevens' activity in her new position would be in direct opposition to her country's government. The most conspicuous instance of this opposition would regard, indeed, the equal rights treaties eventually signed in Montevideo in 1933.

According to later accounts of the NWP, approved by Scott, he had been 'stirred by Doris Stevens' appeal for treaty action on women's rights in the special plenary session'. Her speech had been the trigger for his commitment to 'the abolition of discriminations based on sex' and the achievement of 'equality by international action'.⁴⁷ In the following months, Scott would be impressed by the legal skills that Stevens and Paul had shown in their initial work for the IACW. Beyond their direct experience with the lobbying of legislatures and legislative action, both sought an academic background in law. Starting her studies in 1922, Paul obtained several degrees. In 1928, the American University awarded her a doctorate in civil laws.⁴⁸ In 1929, Stevens began her studies in international law and foreign policy at Columbia University.

The resolution that instituted the commission had tasked it with 'the preparation of juridical information ... to enable the [next] Conference of American States to take up the consideration of the civil and political equality of women in the continent'.⁴⁹ Stevens and Paul began working on a study of the legal status of women in the Americas in order to build a case for their equal rights treaties. By July, the commission had agreed to focus on nationality issues. Consulting with Scott on the topic, they found a common, radical approach that diverged from the mainstream

⁴⁵ Dubois, *supra* note 39, at 89.

⁴⁶ N. Bercovich, *From Motherhood to Citizenship: Women's Rights and International Citizenship* (1999), at 81. For Stevens' account of the establishment of the commission and the roles of Bustamante and Maurtua in it, see Doris Stevens to James Brown Scott, 3 February 1929, Folder 1, Box 48, JBS Papers.

⁴⁷ 'James Brown Scott', attached to Edith Houghton Hooker to James Brown Scott, 29 June 1934, Folder 1, Box 49, JBS Papers.

⁴⁸ Nancy Cott has drawn a connection between Paul's law studies in the 1920s and 'her aims [being] framed ... more and more abstractly and legalistically'. Along with this trend, 'the NWP campaign for equal rights devolved into a practice of exclusiveness and a defense of the status quo with regard to everything but the gender question. ... As a result of its construction of the gender imperative, the NWP made equal rights an abstract goal, because placing it in the context of social reality would have required stands on social and political issues that affected women but that were not strictly gender questions'. Cott, *supra* note 10, at 65, 67–68.

⁴⁹ 'Resolution – Inter-American Commission of Women', in Scott, *supra* note 44, 408.

of international lawyers and diplomatic operators. Stevens, Paul and Scott naturally began to work together.

This connection came at a crucial moment when several approaches and initiatives were jockeying to gain influence in view of the League of Nations Codification Conference, which was called for 1930. Nationality, alongside territorial waters and state responsibility for damages to foreigners, had been chosen as subjects for codification at the conference in The Hague. In November 1927, Manley O. Hudson had started a preparatory project, known as the Harvard Research in International Law,⁵⁰ with the purpose of researching and drafting treaties on the topics of the conference. Hudson assembled a group of top-level experts including Edwin Borchard, Richard W. Flournoy, George Wickersham and James Brown Scott. Scott was part of the working group on nationality led by Flournoy. In May 1928, Scott wrote him a letter to explain his general views on the subject.⁵¹ He was aware that he was proposing 'a somewhat drastic method' to streamline nationality laws worldwide and instate a uniform global standard. His formula rested on two basic ideas: first, the adoption of *ius soli* (place of birth) as the single mode of acquisition of nationality at birth, and second, the adoption of nationality rules based on full individual equality.

Indeed, the generalized adoption of *ius soli*, with the exclusion of any other nationality standard besides voluntary naturalization, would lead to 'the elimination of "sex" and derivative nationality 'from the statute book'. Scott added that 'the effect of this triumph on the part of womankind – which [he] personally regard[ed] as as desirable as it [was] inevitable' – would not generate trouble if parents were of different nationalities under a *ius soli* regime, while it could under *ius sanguinis*. In his view, independent nationality and *ius soli* were the combined elements of the global nationality 'law of the future'. The 'suggestion ... that the husband and wife should be of the same nationality ... is generally made by the husband, and is a remnant of the old law. The more modern legislation, which permits the wife to retain her nationality is the order of the day, and is inconsistent with former views and practise [sic]'.⁵²

The times, however, were not progressive enough for the Harvard Research to fully accept Scott's proposals. In the months leading to the presentation of the final draft convention on nationality, which was set for April 1929, Scott and Stevens teamed up to push for the inclusion of a full right to independent citizenship for women. Realizing they were on the losing side of the argument, they decided together to publish Scott's letter to Flournoy to seek support.⁵³ The Harvard Research went in a different direction. Stevens and Scott objected to Article 19 of the draft convention on nationality,⁵⁴

⁵⁰ For details on the Harvard Research in International Law and its inception, see Kenny, 'Manley O. Hudson and the Harvard Research in International Law 1927–1940', 11 *International Lawyer* (1977) 319.

⁵¹ James Brown Scott to Richard W. Flournoy Jr., 15 May 1928, Folder 3, Box 12, JBS Papers.

⁵² James Brown Scott to Richard W. Flournoy Jr., 15 March 1928, Folder 3, Box 12, JBS Papers.

⁵³ See Doris Stevens to James Brown Scott, 19 February 1929, Folder 7, Box 8, JBS Papers. The letter was published as James Brown Scott, 'International Status of Married Women', 91 *Advocate of Peace through Justice* (March 1929) 137. Scott also asked Stevens if it would have been helpful to enlist the help of the NLWV. She replied negatively, informing Scott that 'they did not do Pan American work as we did, ... they did not confine themselves to feminist work as we did'. Quoted in Bredbenner, *supra* note 2, at 205.

⁵⁴ See James Brown Scott to Doris Stevens, 26 February 1929, Folder 6, Box 48, JBS Papers.

which read: 'A woman who marries an alien shall, in the absence of a contrary election on her part, retain the nationality which she possessed before marriage.'⁵⁵ While more progressive than the law in force in most countries, this article still provided for an exception to independent nationality, which put women in the position to renounce their nationality in consequence of a momentary, possibly impulsive, decision.

On 27 May, Stevens informed Scott that she had decided to form a Committee on Nationality under the IACW, headed by Paul, as an alternative to the one set up by the Harvard Research.⁵⁶ Scott approved and applauded the initiative.⁵⁷ After all, Stevens had already proven that her skills could compare with those of the Harvard experts; she had pointed out several errors of translation in a collection of nationality laws prepared by Hudson and Flournoy, just in time for it to be revised before being published by the Carnegie Endowment for International Peace.⁵⁸ Scott motivated Stevens further in the pursuit of equal rights through treaties by pointing out the domestic advantages of this international route.⁵⁹ Scott pointed to constitutional history and US Supreme Court case law to argue that civil and political rights fell within the treaty-making power of the USA.⁶⁰ An international equal rights treaty would represent the law of the land, leaving no constitutional recourse to states after its ratification in the Senate. At the end of the day, it would have the same effect as an equal rights constitutional amendment.⁶¹

4 Unprogressive Codification of Nationality at The Hague

Doris Stevens was determined to get to the Hague Codification Conference as prepared as possible. She spent the summer of 1929 in Europe, consulting and strategizing with feminist leaders, including Margaret Rhondda and Chrystal Macmillan, and discussing

⁵⁵ Harvard Research in International Law, Harvard Law School, 'Nationality, Responsibility of States, Territorial Waters: Draft of Conventions Prepared in Anticipation of the First Conference on the Codification of International Law, The Hague, 1930', 23 *AJIL*, Special Supplement (April 1929) 3, at 16.

⁵⁶ See Doris Stevens to James Brown Scott, 27 May 1929, Folder 1, Box 48, JBS Papers; see also Bredbenner, *supra* note 2, at 204.

⁵⁷ See James Brown Scott to Doris Stevens, 29 May 1929, Folder 6, Box 48, JBS Papers.

⁵⁸ See Richard W. Flournoy Jr. to James Brown Scott, 24 April 1929, Folder 1, Box 48, JBS Papers; James Brown Scott to Doris Stevens, 26 April 1929, Vol. 314, Carnegie Endowment for International Peace Papers (CEIP Papers), Rare Books and Manuscripts Collections, Butler Library, Columbia University, New York. The book was eventually published as R.W. Flournoy Jr. and M.O. Hudson (eds), *A Collection of Nationality Laws of Various Countries as Contained in Constitutions, Statutes and Treaties* (1929).

⁵⁹ See especially the correspondence between Scott and Stevens over the spring and summer of 1929 in Folder 6, Box 48, JBS Papers.

⁶⁰ See *Missouri v. Holland*, 252 US 416 (1920). Another judgment Scott considered a key foundation for his interpretation was *People v. Gerke*, decided by the Supreme Court of California in 1855 (5 Cal. 381).

⁶¹ Scott would develop the full argument in his 1934 American Society of International Law presidential address, with explicit reference to the effects of the possible ratification of the 1933 Montevideo equal rights treaty. See Scott, 'Treaty-Making under the Authority of the United States', 28 *ASIL Proceedings* (1934) 2. George Finch, Scott's right-hand man, would later criticize the trend of enlarging the scope of the treaty-making power and pointed to the campaign for the equal rights treaty at the 1928 Pan-American Conference as its beginning. See Finch, 'The Need to Restrain the Treaty-Making Power of the United States within Constitutional Limits', 57 *AJIL* (1954) 62.

the merits of equal nationality at public events.⁶² She also campaigned for the appointment of women as delegates for the conference.⁶³ In the meantime, the IACW's research on nationality laws proceeded well in the USA under the direction of Paul. Scott continued offering his help in providing resources and expertise.⁶⁴ He had also made possible the organization of the first conference of the IACW, which was to be held in February 1930 as preparation for the Hague conference, which would begin in March. Stevens had first contacted the State Department, asking for support to organize the event in Washington, DC, but it had refused.⁶⁵ Scott alerted his Cuban contacts and vouched for the official status of the IACW with the Cuban government, a status that had been put in doubt by the director of the Pan-American Union, Leo Rowe.⁶⁶

The presentation of the report of the Committee on Nationality was the highlight of the IACW gathering in Havana.⁶⁷ It analysed the nationality laws of 84 countries and recommended the adoption of an equal nationality treaty as an end to discrimination against women in matters of citizenship.⁶⁸ In praising the volume, Scott did not miss the chance to remark how more precise and complete it was than the one prepared by the Harvard Research: '[T]he documents contained in the treatises prepared by our masculine experts are full of incredible errors, which have been corrected by feminine industry and exactitude.' This achievement was further proof of the 'faith' Scott already had 'in the capacity of woman'. It was time for women to participate directly in determining the nationality laws that affected them. Therefore, Scott renewed the request to the '[g]overnments of all the Americas [to] appoint women delegates to take part in the Conference of The Hague [so] that equality may be introduced into the world'.⁶⁹ The IACW issued a more specific resolution, asking the president of the USA to appoint Doris Stevens as a plenipotentiary for the Hague Codification Conference.⁷⁰

The selection of the delegations represented an early sign that the Hague conference would not be successful for women's rights organizations. Only two women – one from Germany, Marie Elisabeth Lüders, and the other from the USA – were appointed as full delegates. The US delegate, Ruth B. Shipley, head of the Passport Division of the State Department, was not connected to the women's rights movement.⁷¹ President Herbert

⁶² See Lee, 'The Inter-American Commission of Women: A New International Venture', *Pan-American Magazine*, October 1929, reprinted in Jonathan Cohen (ed.), *A Pan-American Life: Selected Poetry and Prose of Muna Lee* (2004) 223.

⁶³ See Bredbenner, *supra* note 2, at 202–203.

⁶⁴ See, e.g., 'Resolution – Tribute to the Carnegie Endowment for International Peace', First Conference of the Inter-American Commission of Women, 24 February 1930, reprinted in Scott, *supra* note 44, at 505.

⁶⁵ See Francis White to Doris Stevens, 8 March 1929, Folder 6, Box 48, JBS Papers.

⁶⁶ See the correspondence between James Brown Scott and Doris Stevens in Folder 6, Box 48, JBS Papers.

⁶⁷ For the programme of the conference and the resolutions it approved, see Scott, *supra* note 44, at 500–506. A later copy of the report, revised for the 1933 Montevideo Conference, can be found in Folder 5, Box 49, JBS Papers.

⁶⁸ See Hill, *supra* note 2, at 129–132.

⁶⁹ J.B. Scott, *Observations on Nationality* (1931), at 95–96.

⁷⁰ See Scott, *supra* note 44, at 503.

⁷¹ Historian Ellen DuBois has called Shipley an 'antifeminist'. See DuBois, 'Storming The Hague: the 1930 Campaign for Independent Nationality for Women Regardless of Marital Status', 4 *Tijdschrift voor Genderstudies* (2003) 18, at 20. Somehow contradicting DuBois' assessment is the circumstance that Shipley proposed to the conference – a resolution for the further study of equal nationality (see, e.g., D.H. Miller, 'The Hague Codification Conference', 24 *American Journal of International Law* (1930) 674, at 682–683).

Hoover, though, did appoint a NWP member for a minor position in the delegation; Emma Wold would act as a technical advisor at the conference. These two appointments occurred against the advice of Manley Hudson, who ‘had made it clear’ to the administration ‘that he did not want women to be officially part of the delegation’.⁷²

Once the conference opened on 13 March, it soon became clear that there was no space for an agreement on territorial waters and state responsibility. Therefore, the stakes to achieve any kind of compromise on nationality became higher; the League of Nations and the participating governments could not afford to close the conference without a treaty to show for it. The delegate of Chile, Miguel Cruchaga, introduced Paul’s Equal Nationality Treaty as a resolution on behalf of the NWP and the IACW. It was quickly defeated. After that, the goal of the women’s rights activists at The Hague was to make sure that the conference would not crystallize and reaffirm the principle of derivative citizenship for women in international law. The officers of the conference did not make their job easy. The president of the conference, Theodorus Heemskerk, barred them from the Peace Palace, making it impossible for them to lobby the delegations at the event’s venue.⁷³ The one exception was Nicolas Politis, who, in his capacity as chairperson of the Committee on Nationality, gave the women activists a chance to be heard, ‘merely [as] an act of courtesy’.⁷⁴ In her speech at the hearing, held on 1 April, Stevens made public that many delegates had already told her that she could not change their minds. Defiantly, she reminded them that they had no merit for the privilege and power they held: it was ‘a mere accident that we were born women and you were born men’.⁷⁵

The draft convention that emerged out of the conference’s discussions accepted and assumed the principle of the dependent nationality of married women; it only sought to coordinate different national laws so that their combination would not determine cases of statelessness as a result of marriage. For instance, article 8 of the convention prescribed that, ‘[i]f the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditional on her acquiring the nationality of the husband’.⁷⁶ Scott would argue later in the year that a much simpler way to avoid statelessness, and guarantee equality at the same time, would have been

⁷² Bredbenner, *supra* note 2, at 206–207.

⁷³ See, *ibid.*, at 210. Scott had sent Heemskerk an introduction of Stevens and her activities, which apparently failed to gain his benevolence. See James Brown Scott to Theodorus Heemskerk, 17 March 1930, Folder 8, Box 12, JBS Papers.

⁷⁴ Quoted in Bredbenner, *supra* note 2, at 211.

⁷⁵ See *ibid.* At the opening of the conference, Scott sent a cable to Politis introducing Stevens and telling him that he hoped for ‘the adoption of [the] equality resolution or nothing’ with regard to the ‘nationality [of] women’. James Brown Scott to Nicolas Politis, 7 March 1930, Folder 8, Box 12, JBS Papers. On 11 April, Politis replied that, given ‘the ultraconservative spirit ... in this Conference’, what had been ‘obtained’ – for instance Art. 9, which allowed married women to retain their nationality in case of naturalization of the husband during marriage – was ‘the maximum that could be reached’. Nicolas Politis to James Brown Scott, 1 April 1930, Folder 6, Box 6, JBS Papers.

⁷⁶ Convention on Certain Questions Relating to the Conflict of Nationality Laws (Convention on Certain Questions), reprinted in ‘Conference for the Codification of International Law – Final Act’, 24 *AJIL*, Supplement (1930) 192, at 193.

to leave 'woman's nationality ... not affected by marriage', a principle already accepted in a constantly growing number of national legal systems.⁷⁷ On 4 April, Stevens sent a cable to Paul in Washington, DC, informing her that the convention on nationality would pass: 'The leaders are agitated over our pressure but we have lost.'⁷⁸ Still, she suggested her a course of action. There were still goals to achieve by lobbying the US government and Congress. That was the reason why Paul had stayed back. She had started 'by canvassing senators tirelessly', making sure that, even if the administration eventually signed the convention, there would be no majority for ratification.⁷⁹

As it turned out, the US government was already sceptical of the opportunity of regulating nationality through international law, but it did not advertise this position for diplomatic reasons. Leaving open the possibility of accession to an equal nationality treaty allowed the USA to participate in the negotiations and influence the drafting process.⁸⁰ Once the final draft was set, the US delegation had more than one reason to be unhappy with it. It was not only incompatible with the Cable Act, but it also forbade expatriation unless the person already possessed, or would receive as a consequence, another nationality.⁸¹ This was a sensitive point for the USA, which was not ready to give up the unfettered possibility of depriving of nationality those citizens who had left the country for good. The administration preferred not to advertise this position either, as it was a possible source of tension with immigrant communities and their countries of origin.⁸² Therefore, the issue of independent nationality became the point of contention that the US government highlighted the most among its several perplexities about the convention.⁸³

The USA could have signed the convention with significant reservations as many other countries did, but the NWP and its allies mounted a relentless campaign for the government to take a stand and vote against it. Scott did his part. Throughout the duration of the conference, he had repeatedly made his case for equal nationality and explained the dangers of a discriminatory convention in letters to State Department officials,⁸⁴ US senators,⁸⁵ Latin American diplomats⁸⁶ and delegations at The Hague.⁸⁷

⁷⁷ Scott, 'Unprogressive Codification of Nationality at The Hague', 18 *Women Lawyers' Journal* (1930) 38, at 39.

⁷⁸ Doris Stevens to Alice Paul, 4 April 1930, Folder 8, Box 7, JBS Papers.

⁷⁹ Bredbenner, *supra* note 2, at 210.

⁸⁰ See *ibid.*, at 207–208.

⁸¹ See Convention on Certain Questions, *supra* note 76, at 193.

⁸² See Bredbenner, *supra* note 2, at 211–212.

⁸³ It is to be noted that after the negative vote of the USA to the convention, Acting Secretary of State Joseph Cotton released a statement offering expatriation and equality as equivalent motivations, both being 'principles ... firmly embedded in our law' (quoted in *ibid.*, at 214). This was possibly an attempt to counteract the criticism levelled at the administration for having its hand forced by what Cotton called the 'feminine lobby'. For instance, Manley Hudson would later affirm that the government was 'more intent upon mollifying a section of its own public opinion than upon grappling with the very real problems which exist today and which the convention is designed to solve'. Hudson, 'The Hague Convention of 1930 and the Nationality of Women', 27 *AJIL* (1933) 117, at 122.

⁸⁴ See, e.g., James Brown Scott to Wilbur Carr, circa April 1930, Folder 8, Box 12, JBS Paper.

⁸⁵ See, e.g., James Brown Scott to Claude A. Swanson, 4 April 1930, and James Brown Scott to William E. Borah, 7 April 1930, Folder 9, Box 12, JBS Papers.

⁸⁶ See, e.g., James Brown Scott to Tirso Mesa, 8 April 1930, Folder 9, Box 12, JBS Papers.

⁸⁷ See, e.g., James Brown Scott to Miguel Cruchaga, 7 April 1930, Folder 9, Box 12, JBS Papers.

On the day of the final vote, Scott, John Cable and representatives of the NWP and the National Association of Women Lawyers went to the White House for a final appeal to President Hoover.⁸⁸ Doris Stevens described the decisive moment: ‘There was exhilaration in the air. ... The nationality convention was ... the only document to come out of the conference. All of a sudden David Hunter Miller, head of the US delegation went to the platform and announced that the USA would not sign.’⁸⁹ This would be the only dissenting vote; the other 40 countries would all sign the convention. Yet the isolated stand of the USA allowed the NWP to spin a triumphant narrative out of what was an ostensible setback for equal nationality. Less than two weeks after the vote, Anna Kelton Wiley, chairperson of the NWP, put into words this interpretation of the events of the conference in a letter to Scott:

Instead of the final outcome at The Hague being a defeat, it is really a moral victory. ‘Forty to One’ will become a by-word for the feminists of the United States. It makes one think of the Pass of the Thermopylae with the United States playing the role of Leonidas, with this difference. The dying courage of Leonidas stirred all Greece; the living courage of the United States at The Hague, we hope, will stir the world from its ancient prejudice against women.⁹⁰

The step from moral victory to moral superiority of the new world over old Europe was short. Alva Belmont, the NWP’s main financial backer, depicted Europeans hanging on to ‘the old world subjection of women’ as the last remnant of their disappearing *ancien régime*: ‘These men have lost their slaves. They have lost their serfs. They have lost their dominion over the working class. They still think they can dominate women. It terrifies them to think that in the future women mean to govern themselves[.]’⁹¹ Conveniently overlooking the fact that the Latin American governments had signed the convention, Scott wrote of a ‘Western Continent, conceived in liberty, ... insist[ing] upon equality in law’.⁹² The narrative of moral superiority prompted ‘a surge of home support for the rejection of the convention’, which, in turn, helped to spur Congress into action and remove two of the provisions of the Cable Act still inspired by dependent citizenship. In 1930, the clause expatriating women married to foreigners and residing abroad was repealed. In 1931, barring from citizenship women married to aliens who were ineligible for naturalization was the next clause to disappear from the books.⁹³

The events of The Hague also spurred further international initiatives by Stevens, Paul and Scott. Paul moved to Geneva to follow up and maintain pressure on the League of Nations. Initially, she relied on a recommendation that Ruth Shipley of the US delegation had introduced at the Hague Codification Conference, calling for the

⁸⁸ See Bredbenner, *supra* note 2, at 213; Finch, ‘Equal Rights for Women’, unpublished text meant for James Brown Scott’s biography, Folder 3, Box 69, at 19, JBS Papers.

⁸⁹ Quoted in DuBois, *supra* note 71, at 23–24. For Miller’s own account of the conference, see Miller, *supra* note 71.

⁹⁰ Anna Kelton Wiley to James Brown Scott, 23 April 1930, Folder 2, Box 9, JBS Papers.

⁹¹ Quoted in Bredbenner, *supra* note 2, at 215.

⁹² Scott, ‘Nationality’, 24 *AJIL* (1930) 556, at 560.

⁹³ See Bredbenner, *supra* note 2, at 215.

further 'study of ... the principle of equality of sexes in matters of nationality'.⁹⁴ The joint action of women's rights activist groups led to the establishment, in 1931, of a Women's Consultative Committee on Nationality to support the League of Nations in that further examination. The committee took several initiatives to reopen the discussion, but '[m]ost of the governments opposed any fresh examination of the matter'.⁹⁵ The best that could be achieved was an Assembly resolution in 1932, which simply affirmed 'that the coming into force of Articles 8 to 11' – the ones in the convention dealing with the nationality of married women – 'would in no way prejudice further concerted international action [and] place any restriction upon ... any state that may desire to give further effect in its nationality laws to the principle of the equality of the sexes'.⁹⁶

The effectiveness of the Women's Consultative Committee on Nationality was not only marred by the opposition of governments but also by its own internal disagreements, which were exacerbated when Paul sought to expand its purview beyond nationality issues to the general legal status of women. Indeed, if a shaky alignment could be found around independent citizenship, equal rights and social feminists could find no other common position. The committee's lack of unity made it incapable of exerting any significant influence in a campaign that was anyway waged against difficult odds.⁹⁷

5 Victory at Montevideo: The Stevens Treaties

The defeat of The Hague provided Stevens and Scott with an opportunity to start a deeper discussion with Latin American governments over equal nationality. Latin American states had signed the convention on nationality at the Hague Codification Conference, but it was not too late to prevent them from ratifying it. The two proceeded with a concerted action. In July 1930, Stevens, in her capacity as chairperson of the IACW, sent a communication to the ministers of foreign affairs of all state members of the Pan-American Union. The main item was a questionnaire on their respective legal systems. Its function was to gather information for further studies on the legal status of women that the commission was undertaking in view of the following Pan-American Conference. Stevens suggested that 'the Ministers refrain from action' in the meantime; the fact that the Hague Codification Conference itself had recommended additional study on the nationality of married women called for prudence.⁹⁸

Scott contributed by cultivating his vast network in the foreign policy establishment of the American continent. As soon as rumours emerged that a country was taking

⁹⁴ 'Conference for the Codification of International Law', *supra* note 76, at 229.

⁹⁵ Hudson, *supra* note 83, at 119. On the detail of those initiatives, see *ibid.*, at 118–120.

⁹⁶ The resolution is reproduced in *ibid.*, at 119–120.

⁹⁷ On the Women's Consultative Committee and its internal divisions, see, e.g., Miller, *supra* note 71, at 227–232; L.J. Rupp, *Worlds of Women: The Making of an International Women's Movement* (1997), at 41, 147–148.

⁹⁸ James Brown Scott to Doris Stevens, 2 July 1930, Folder 12, Box 12, JBS Papers.

preliminary steps towards ratification, he intervened with opposing arguments. Beyond educating his correspondents on the diplomatic and legal issues involved,⁹⁹ Scott kept reminding them of the responsibility of the Americas' moral and progressive leadership. As he explained to the Cuban secretary of state, for instance:

The Western World ... is breaking down barriers which have separated classes and it has begun the process of according to individuals, as such, equal rights, equal duties and equal privileges. I ask if Cuba would not confess its faith in ... equal right, to the extent of withholding its approval of the Convention on Nationality and refraining from submitting the Convention to the Republic for its ratification.¹⁰⁰

Scott also proceeded to align the positions of the American Institute of International Law, which he directed, with those of the IACW. In October 1931, the Governing Board of the institute named Stevens as its first woman member. In the same session, the board also recommended for approval at Montevideo an equal rights treaty and an equal nationality treaty. Both had a single substantial article. The former, which adopted the language that Paul had devised for the ERA, provided that in the 'jurisdiction' of 'Contracting States ... men and women shall have equal rights throughout the territory'. With the latter, 'the Contracting Parties agree[d] there shall be no distinction based on sex in their law and practice relating to nationality'.¹⁰¹ In view of the Montevideo conference, Stevens was also named the institute's rapporteur on the civil and political equality of men and women.¹⁰²

On 4 November 1933, Scott spoke before the convention of the NWP on the prospective 'adoption ... by the Conference at Montevideo', which was to take place the following month, of 'these two epoch-making projects'. He showed faith in the women of the IACW to obtain their approval, which 'would ... dedicate the Republics of the vast American continent to equality as they are already dedicated to liberty'. He closed his speech with a plea to 'God' to 'bless the American women' who would soon 'join battle far, far to the south at Montevideo under the light of the Southern Cross'.¹⁰³ A few days later, Scott sent a letter to the secretary of state, Cordell Hull, appointed to the position by Franklin Delano Roosevelt, who had assumed the US presidency earlier in the year and had been Scott's student at Columbia Law School. Scott's letter, which was over 40 pages long, sought to enlighten Hull on his positions on every topic

⁹⁹ See, e.g., the memorandum sent to the Mexican ambassador to the USA, 14 April 1930, Folder 14, and the correspondence with Brazilian diplomats and the US ambassador in Brazil, Folder 17, October and November 1931, Box 12, JBS Papers. Beyond the personal letters, Scott also sent a memorandum to all American ministers of foreign affairs in the summer of 1931 as president of the American Institute of International Law. See 'Second Letter to Ministers of Foreign Affairs – Draft', 10 June 1931, Folder 4, Box 49, JBS Papers.

¹⁰⁰ James Brown Scott to Rafael Martínez Ortiz, 27 June 1930, Folder 11, Box 12, JBS Papers.

¹⁰¹ See Lee, 'Equal Rights Approved by American Institute of International Law', *Equal Rights*, 28 November 1931.

¹⁰² See, e.g., James Brown Scott to Doris Stevens, 7 November 1933, and James Brown Scott to Victor Maurtua, 10 November 1933, Vol. 332, CEIP Papers.

¹⁰³ Scott, 'The Inter-American Commission of Women Reports at Montevideo – Address before the Biennial Convention of the National Woman's Party, Wilmington, Delaware, November 4, 1933', Folder 1, Box 49, JBS Papers.

to be addressed by the upcoming conference. With regard to 'the political and civil rights of women', Scott retraced for Hull the events and the steps forward of recent years, ranging from the initiatives within the pan-American machinery to the League of Nations and the Institut de droit international. As he suggested, the secretary of state could contribute to an 'immense victory of right over inequality'; he just had to instruct 'the Chairman of the American Delegation' at Montevideo to 'advocate the acceptance of six lines, three on equal rights and three on equal nationality in the projects to be presented by Miss Stevens'.¹⁰⁴

Not surprisingly, though, the USA's delegation initially opposed both recommendations. The Equal Rights Treaty was perceived – correctly – as an attempt by the NWP to force the hand of national institutions towards the ERA. With regard to equal nationality, what Paul considered a reversal of the US policy at The Hague was really not; the State Department had consistently preferred not to be bound in matters of nationality by a treaty, whatever its approach and content.¹⁰⁵ The USA brought a woman delegate to Montevideo, Sophonisba Breckinridge. She would join the battle but on the opposite side of Stevens and the NWP. Breckinridge, a professor at the University of Chicago who had published extensively on the social, legal and economic condition of women in the USA, took the floor before the Third Committee of the conference, tasked with addressing the civil and political rights of women. She explained in detail why she, the government she represented and 'several groups of organized women', including the League of Women Voters, considered the initiatives of equal rights feminists misguided. Her comments mirrored the intersectional perspective of class and gender, which, as we have seen in the second section of this article, the NWP had quashed within its fold in the early 1920s to pursue the radical egalitarian approach favoured by its white, middle- and upper-class leaders:

[W]hile equality should enter into the solution as a guiding principle, it is not enough since equality may be obtained by selecting the less advantageous situation[. T]here are two groups of women, whose interests apparently in conflict are, in fact, identical[.] The woman of general professional attainments who feels the irksome restrictions imposed sometimes by law, sometimes by prejudice, needs and desires emancipation from those restrictions. While no treaty of equality will persuade a client or a patient to employ a woman rather than a man, it is not unnatural that such women might think to find assistance in some such device. On the other hand, the women at the bottom of the occupational ladder, weak bargainers, ... find almost the only basis of effective equality in such protection from undue exploitation as is provided by legislation restricting hours, prohibiting night work, prescribing conditions of safety and decency in work places[.]¹⁰⁶

The proposal for an equal rights treaty was declined. The conference resolved that it could not 'impose' such blanket 'binding obligations ... without curtailing the sovereign rights of the different States'.¹⁰⁷ Nevertheless, the delegations of four states – Cuba, Ecuador, Paraguay and Uruguay – decided to sign the treaty.¹⁰⁸

¹⁰⁴ James Brown Scott to Cordell Hull, 7 November 1933, Vol. 335, CEIP Papers.

¹⁰⁵ See Bredbenner, *supra* note 2, at 233–234.

¹⁰⁶ 'Seventh International Conference of American States, Third Committee, Civil and Political Rights of Women – Minutes and Antecedents', Folder 3, Box 51, at 14–15, JBS Papers.

¹⁰⁷ Resolution quoted in Finch, *supra* note 88, at 28.

¹⁰⁸ Equal Rights Treaty, *supra* note 3.

The Equal Nationality Treaty received much wider support. Several countries had announced that they would sign it before the conference opened. After all, Latin American governments could make this gesture of goodwill towards feminist causes at no cost, as their legal systems already generally enshrined the principle of equal nationality. The USA would eventually change its course and join them. Once the intention of the government not to sign became public knowledge during the opening days of the conference, supporters of the treaty mounted a vehement campaign of protest. The only women's organization that supported the administration in this phase was the NLWV. Even though they promoted and campaigned for independent citizenship, 'the NLWV's leaders were too distracted by the obvious textual similarities between the nationality treaty and the ... equal rights amendment to assess the merits of the nationality treaty independently. [It] had to be arrested because it could serve as the means towards ... the abolition of all laws based on sex'.¹⁰⁹

The NLWV remained isolated in its position. The protest went beyond feminists and reformers, receiving support from most of the nation's press. Indeed, the general perception was that not signing in Montevideo was not a consistent continuation of the US policy at The Hague; rather, it was a betrayal of the spirit of that earlier decision that took a stand for women's rights.¹¹⁰ Beyond public pressure, there were other circumstances that favoured reconsideration by the administration. Refusing to sign a treaty that was so strongly supported by Latin American countries did not fit with the 'good neighbour' policy to which Roosevelt had committed. Moreover, the USA also had little to lose in terms of new obligations; the Cable Act, with its recent modifications, already prescribed full equality in almost every aspect of domestic nationality law. Notwithstanding the objections of the State Department, Roosevelt instructed the delegation to switch its position. On 26 December 1933, 19 American countries, including the USA, signed the Equal Nationality Treaty.¹¹¹

The NWP celebrated the outcome of the Montevideo conference as a turning point in history.¹¹² Anna Kelton Wiley affirmed that Paul, Stevens and Scott were among the 'few mortals ... given the great joy of victory due to their own labors' and deserving 'the gratitude of hosts of people'. She also expressed her own personal gratitude to Scott: 'Our two leaders are quite peerless in this great triumph but without your great knowledge, great sympathy and great personality this event could not have taken place.'¹¹³ Scott, instead, placed the credit for the equality conventions entirely somewhere else by coining them the Stevens Treaties.¹¹⁴ He opened his account of the Montevideo conference in the *American Journal of International Law* by analysing those two documents and commenting on their importance:

¹⁰⁹ Bredbenner, *supra* note 2, at 217, 235–237.

¹¹⁰ See, in this sense, *ibid.*, at 234–235.

¹¹¹ Equal Nationality Treaty, *supra* note 3.

¹¹² See, e.g., Scott, 'Conflict and Victory: The Inter-American Commission of Women at Montevideo', *Equal Rights*, 13 January 1934, and also preserved in draft in Folder 5, Box 49, JBS Papers.

¹¹³ Anna Kelton Wiley to James Brown Scott, 21 December 1933, Folder 3, Box 48, JBS Papers.

¹¹⁴ See, e.g., Scott, *supra* note 112, at 220–221; Scott, 'Our American Women in Action', 21 *Women Lawyer's Journal* (1934) 13, at 16.

At Montevideo there was established a great and illuminating precedent. In achieving equality by international agreement, our American women, whether consciously or not, have given to the future law of nations its inevitable and enduring direction; and the future law of nations will it not be the result of the collaboration of enlightened men and women?¹¹⁵

The triumph of Montevideo would be completed on 24 May 1934. On that day, the US Senate ratified the Equal Nationality Treaty, and President Roosevelt signed into law the Dickstein-Copeland bill, originally drafted by Alice Paul.¹¹⁶ In consequence of its enactment, all rules in US nationality law applied equally to women and men.

6 Concluding Remarks

The success that the NWP leaders achieved in 1933 and 1934 came when their position of international influence was already in jeopardy. In January 1933, all NWP-led activities, including the IACW, had lost their main source of financial support with the death of Alva Belmont, who had bankrolled the party since its foundation. Also, the limited funding that Scott had been able to provide for the IACW's legal reports through the Division of International Law of the Carnegie Endowment for International Peace came to an end. The trustees had initially indulged Scott's venture into feminist activism. They 'decided to discontinue the Endowment's financial support' when Scott gave the cause 'what they considered undue importance and prominence'.¹¹⁷

In addition, the IACW's position within the pan-American system came under attack at Montevideo. The commission was confirmed by the conference, despite a US-led attempt to secure its suppression.¹¹⁸ The primary goal of the Roosevelt administration was not to get rid of the commission in and for itself but, rather, to get rid of Stevens. Indeed, the leading women in the administration were social feminists who supported protective legislation. Among them were figures like Frances Perkins, secretary of labour and the first woman to be appointed to the US Cabinet, and the First Lady, Eleanor Roosevelt, whose 'disagreements with the NWP were public knowledge'.¹¹⁹ The growing opposition to Stevens' leadership among Latin American feminists facilitated the moves against her.¹²⁰ At the following Pan-American Conference, held in Lima in 1938, the IACW was reformed, allowing the USA to appoint a new

¹¹⁵ Scott, *supra* note 112, at 222.

¹¹⁶ See Bredbenner, *supra* note 2, at 238–242.

¹¹⁷ Finch, *supra* note 88, at 1.

¹¹⁸ See *ibid.*, at 26, 34.

¹¹⁹ Bredbenner, *supra* note 2, at 236. The US press speculated that the initial opposition of the USA to the equal nationality treaty at Montevideo had been directly inspired by Eleanor Roosevelt, an accusation she forcefully rejected (see *ibid.*).

¹²⁰ As examples, one can point to the growing wedge between the NWP and Cuban feminists (see Dubois, *supra* note 39, at 90) or the accusations of Bertha Lutz to Stevens of swaying delegates with flirtation and sexual offers (see Rupp, 'Sexuality and Politics in Early Twentieth Century: The Case of the International Women's Movement', 23 *Feminist Studies* (1997) 577, at 577, 594).

representative. On 1 February 1939, Mary Winslow of the Women's Trade Union League, a social feminist, was chosen to replace Stevens.¹²¹

Shortly after this event, Stevens and Paul fell out with each other, prompting a further reduction of membership and influence for the NWP. In the following decades, they continued their feminist advocacy separately, taking up the role of noble foremothers for younger newcomers to the cause. Their activity would remain confined within the national discourse, without further ventures into international politics. Their declining influence can be explained, at least in part, by their unwillingness to take on board the instances of the larger feminist movement and their increasingly authoritarian leadership style. As Sophonisba Breckinridge explained with clarity at Montevideo, the NWP's credo that women would achieve social equality through blanket equal rights legislation was widely contested, not just in the political discourse at large but also among women and feminist activists.

The Equal Nationality Treaty at least responded – in spirit, but not in method – to an aspiration shared within the women's rights movement. The Equal Rights Treaty, instead, was perceived as the attempt of elitist upper-class professionals to gain further privileges at the expense of working-class and non-white women, whose plight they seemed oblivious or indifferent to. Moreover, the decision to start an international equal rights campaign came from the very top of the NWP, without any semblance of democratic or open consultation. Paul and Stevens pursued it in their own terms, running, respectively, the Women's Consultative Committee on Nationality and the IACW as independently as they could. Looking at it from this point of view, the campaign for the two Montevideo treaties appears as the self-referential action of a restricted elitist group rather than a popular quest for universal justice. Yet it was also the impressive effort of activists who dedicated their lives to improve the social conditions of women and managed, alongside many other friendly and competing groups, to put the equal rights of women on the agenda of international politics for the first time.

Whatever their shortcomings, the work of Paul and Stevens within international institutions in the interwar years remains an impressive feat of legal skills and political savvy. Fighting against prejudice, Paul, Stevens and many other women managed to get their voices heard and leave their mark in the development of international law. Their story shows that women's contribution to the discipline in that seminal period can be studied and recovered if we only look in the right place. True, besides a handful of exceptions, women were excluded from international law, academic chairs, diplomatic service and the higher-level staff of international institutions. If we limit our

¹²¹ See Becker, *supra* note 17, at 184–186; Finch, *supra* note 88, at 33–37. Scott, close to retirement and in declining health, enlisted Bustamante in an unsuccessful campaign to fight the decision (see James Brown Scott to Antonio de Bustamante, 18 May 1939, Folder 31, Box 12, JBS Papers). They argued that, as Stevens had been appointed by the Pan-American Union, the USA had no legal control over her membership and chairmanship of the Inter-American Commission of Women (see, e.g., James Brown Scott to Cordell Hull, 29 June 1939, Folder 32, Box 12, JBS Papers). Scott sought the support of the Foreign Ministries of the American republics (see the model letter in Folder 32, Box 12, JBS Papers), the Pan-American Union (see Leo Rowe to James Brown Scott, 2 February 1929, Folder 5, Box 48, JBS Papers) and members of the US congress.

purview to those roles, it is easy to conclude that, when it comes to interwar international law, women were simply not there. But activists pursuing peaceful global relations or women's rights in various forms powered through, garnering influence and achieving political and legislative results in international fora. It is time to tell their stories and restore them to their rightful place in the history of our discipline.